(27)

FILED
AUG 27 1943
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1943

NO. 128

ALVIN EMMETT SKINNER, *Petitioner,*

vs.

WILBER L. DINGWELL, *Respondent.*

REPLY BRIEF OF PETITIONER TO BRIEF OF RESPONDENT.

ELMER MCCLAIN,
Lima, Ohio.

R. BROWN,
Creston, Iowa,
Attorneys for Petitioner.

INDEX.

	Page
Statement of Facts	1
Is Petitioner a Farmer?	1
Respondent's Reasons for Denying the Writ	3
The Real Issue Involved	3

CASES CITED.

Federal Land Bank v. Nalder, 116 Fed. (2) 1004 at 1006	5
First National Bank vs. Beach, 301 U. S. 435	1
Union Joint Stock Land Bank vs. Byerly, 310 U. S. 1	4

Supreme Court of the United States

October Term, 1943

In Bankruptcy

ALVIN EMMETT SKINNER, *Petitioner,*

vs.

WILBER L. DINGWELL, *Respondent.*

REPLY BRIEF OF PETITIONER TO BRIEF OF RESPONDENT.

In view of Respondent's charge that the record is distorted and colored by Petitioner and Respondent's presentation of the record, Petitioner files this Reply Brief.

STATEMENT OF FACTS.

In Respondent's Statement of Facts (page 2, 2) it is stressed that Petitioner is not the owner of the farm. Chap. 75 (c) provides that "A Petition may be filed by any farmer." This being true Petitioner has the same right to have the benefits of the Act if he is a farmer even though only a tenant, therefore there is no merit in that contention.

IS PETITIONER A FARMER?

Following this everything in the record tending to negative Petitioner's status as a farmer is summarized and stressed. As this Court said in the case of

First National Bank vs. Beach, 301 U. S., 435,

"In every case the totality of the facts is to be considered and appraised." The *Beach* case *supra* is the only case in which this court has construed the definition of a farmer and

Petitioner refuses to be diverted from the substance and plain English written into that decision. In the *Beach* case he kept three sheep for food, one horse for carting, tools, none purchased since 1921. Earnings from sale of poultry and eggs, $200.00, hay, $75.00, vegetables and flowers, $25.00. Total, $300.00 per year. Rentals, $3700.00. He did not cease to be a farmer because drought or wind or pests may have rendered the farm barren. Compare the record here. Ten head of live stock, chickens and hay, a tractor, cultivator, plow, planter, binder, corn binder, two wagons, spreader, two mowers, alfalfa cultivator, buck rake, hay rake, harness. (Tr. 6-7). Sales of farm products produced in 1940, $2828.09, 1941, $3497.76. (Tr. 44-5). In addition thereto produced between 6000 and 7000 bushels of corn, (Tr. 17). Testimony of Petitioner witness Ealey and Bales (Tr. 38-42) shows that Petitioner spent his time exclusively on the farm whenever necessary. In addition to his investment in farm equipment and the products of the farm the farm itself was the old home farm in which he had an estate which farm had a value of $11000.00, the Mortgage indebtedness against which he offers to pay in full, (Tr. 10-12). The value of the farm, the farm machinery and the products of the farm for a year total nearly $18000.00, by comparison his investment in other activities. Merchandise, $500.00, saw mill etc. $800.00, miscellaneous, $200.00. Total, $1500.00. True the net income from the farm was greatly reduced by rental charges, payment of interest on mortgage debt and other expenses for the purpose of saving the home farm whereby the net from the farm to him was perhaps not greater than the income from his other activities but the fact that he has the ability to render service in another field wherein his compensation is far greater than if devoted to the labor of farming for which he can secure labor far more cheaply does that change his vocation? Does the application of his labor where it counts most in saving the home farm and his other property change his vocation? Beach was not condemned because he rented the major part of his land for rentals more profitable than his tilling the same. Here Petitioner is being condemned as a farmer because of his ability to secure nearly as great returns out of his labor in connection with other investments of about $1500.00 as he is able to get out of the farm where the total investment is about $18,-

000.00. In the *Beach* case the Court say that "Receipts of income derived from farming operations would make a farmer out of someone who personally or primarily was engaged in a different activity." Would the owner of a factory directing manufacturing therein from his office located in a business district be engaged in manufacturing? If so would not a person owning the entire equipment on a farm operating the same through employees be engaged in producing products of the soil?

RESPONDENT'S REASONS FOR DENYING THE WRIT.

Respondent contended in his Brief that there is harmony among the decisions and cites many cases including the *Beach* case. The many cases cited in themselves show that there is a lack of harmony and an examination of the cases cited and recent reports shows that that issue is being more extensively litigated today than heretofore. Counsel for Respondent, R. Brown, now having two cases pending on appeal in the Eighth Circuit recently appealed the *McLean* case which with this case totals four cases in which counsel himself is employed. An examination of the cases cited in Respondent's Brief, the decisions therein rendered and the cases cited furnish most persuasive evidence that there is no harmony among the decisions. If so why all the litigation?

THE REAL ISSUE INVOLVED.

The real issue involved here is whether or not the Sheriff's Deed issued after the dismissal of the case and during appeal was a valid Deed and whether or not the Court should have retained jurisdiction and administered Bankrupts estate, otherwise than under Sec. 75-s. Those issues are discussed in Petitioner's original Brief (b) & (c) pages 9 to 13. Respondent in Reply Brief and Argument discusses those issues very briefly, pages 15 to 19. Since present counsel for Petitioner prepared his original Petition for Writ and Brief and Argument attached thereto his attention has been called to the Brief and Argument of Petitioner in the Circuit Court wherein it is contended that the Bankrupt's

estate should have been administered under Chap. 12 of the Chandler Act. In addition to the authorities heretofore cited (page 11) holding that upon appeal the case is still pending Counsel for Petitioner cites

Union Joint Stock Land Bank vs. Byerly, 310 U. S. 1. That question is under direct discussion. Not only does the dissenting opinion so hold in that case but also the majority opinion clearly so holds upon facts as they here appear. There because of no appeal having been taken after dismissal the adjudication became final. That it did not continue pending under an Act of Congress subsequently enacted. The opinion states "If it erred in that respect its action was subject to correction by appeal but not subject to attack in collateral proceedings" thereby clearly stating that if an appeal had been taken the case would have remained pending and all rights would have been saved under the provisions contained under Sec. 75-s. Here the appeal has been taken and therefore all rights were saved and the deed issued while this case is still pending is void. As heretofore contended in prior Brief under Sec. 75(n) the status of the Petitioner became that of an adjudicated Bankrupt when his original Debtor's Petition was filed. Therefore if in fact he is not a farmer entitled to the benefits of Sec. 75 his estate is still before the Court in the status of an adjudicated Bankrupt and certainly the Court can not deny its jurisdiction by dismissing the entire proceedings but must exercise its jurisdiction under the mandatory provisions of the Bankruptcy act and do so under Sec. 75-s (3) because Debtor "fails to comply with the provisions of this Section" or under Chap. 12 of the Chandler Act. Petitioner contends that if he has failed to qualify as a farmer then he has failed "to comply with the provisions of this section" and therefore is entitled to have his real estate sold with the right of redemption as provided therein but if such is not true then since the Petitioner and his estate is in the Bankruptcy Court in the status of an adjudicated Bankrupt then certainly the Court can not ignore the mandates of the Act and deny to the Petitioner the right to have his estate administered under the Bankruptcy Act as an adjudicated Bankrupt. Under the Bankruptcy Act with his estate in the jurisdiction of the Bankruptcy Court there is no authority whatever for denying

him those rights which Congress has afforded him through the Bankruptcy Act. The fact that he is not a farmer in no way denies him such rights. *Federal Land Bank vs. Nalder*, 116 Fed. (2) 1004 on 1006 so holds. Since the majority of the courts are now holding that an appeal from a dismissal does not preclude the issuance of a valid Sheriff's Deed and are holding that where a debtor is found not to be a farmer his proceedings must be dismissed and since this Court has not as yet had those issues before it it should here grant Certiorari. The cases cited in the Briefs filed in this cause clearly show there is no harmony among the decisions and clearly show that farmers throughout the United States are losing their farms because they are being denied the benefits which Congress clearly intended they should have.

If this Court refuses this Petitioner relief then he must lose his property which has a value of several thousand dollars greater than the incumbrance thereon.

Respectfully submitted,

ELMER MCCLAIN,
Lima, Ohio,
R. BROWN,
Creston, Iowa,
Attorneys for Petitioner.